

116TH CONGRESS
1ST SESSION

H. R. 3412

To protect the administration of Federal elections against cybersecurity threats.

IN THE HOUSE OF REPRESENTATIVES

JUNE 21, 2019

Mr. RODNEY DAVIS of Illinois (for himself, Mr. WALKER, Mr. LOUDERMILK, Mr. WALTZ, Mr. COLLINS of Georgia, and Mr. UPTON) introduced the following bill; which was referred to the Committee on House Administration, and in addition to the Permanent Select Committee on Intelligence (Permanent Select), for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To protect the administration of Federal elections against cybersecurity threats.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Election Security As-
5 sistance Act”.

1 **SEC. 2. GRANTS TO STATES FOR ELECTION ADMINISTRA-**
2 **TION IMPROVEMENTS.**

3 (a) **AUTHORIZATION OF FUNDS.**—Notwithstanding
4 section 104(c)(2)(B) of the Help America Vote Act of
5 2002 (52 U.S.C. 20904(c)(2)(B)), there is authorized to
6 be appropriated \$380,000,000 for fiscal year 2020 to the
7 Election Assistance Commission for necessary expenses to
8 make payments to States for activities to improve the ad-
9 ministration of elections for Federal office, including to
10 enhance election technology and make election security im-
11 provements, as authorized by sections 101, 103, and 104
12 of such Act.

13 (b) **PAYMENTS TO STATES.**—

14 (1) **STATE MATCH.**—Not later than two years
15 after receiving funds under subsection (a), a State
16 shall make available funds for activities described in
17 such subsection in an amount equal to 25 percent of
18 the total amount of the payment made to the State
19 under such subsection.

20 (2) **TIMING.**—The Election Assistance Commis-
21 sion shall make payments to States under subsection
22 (a) not later than 45 days after the date of enact-
23 ment of this Act.

24 (3) **GUARANTEED MINIMUM PAYMENT.**—For
25 purposes of this section, with respect to section 103
26 of such Act (52 U.S.C. 20903)—

1 (A) each reference to “\$5,000,000” shall
2 be deemed to refer to “\$3,000,000”; and

3 (B) each reference to “\$1,000,000” shall
4 be deemed to refer to “\$600,000”.

5 (c) REFERENCE.—For purposes of this section, with
6 respect to sections 101 and 103 of such Act, each ref-
7 erence to the “Administrator of General Services” or the
8 “Administrator” shall be deemed to refer to the “Election
9 Assistance Commission”.

10 **SEC. 3. TREATMENT OF ELECTRONIC POLL BOOKS AS PART**
11 **OF VOTING SYSTEMS.**

12 (a) INCLUSION IN DEFINITION OF VOTING SYS-
13 TEM.—Section 301(b) of the Help America Vote Act of
14 2002 (52 U.S.C. 21081(b)) is amended—

15 (1) in the matter preceding paragraph (1), by
16 striking “this section” and inserting “this Act”;

17 (2) by striking “and” at the end of paragraph
18 (1);

19 (3) by redesignating paragraph (2) as para-
20 graph (3); and

21 (4) by inserting after paragraph (1) the fol-
22 lowing new paragraph:

23 “(2) any electronic poll book used with respect
24 to the election; and”.

1 (b) DEFINITION.—Section 301 of such Act (52
2 U.S.C. 21081) is amended—

3 (1) by redesignating subsections (c) and (d) as
4 subsections (d) and (e); and

5 (2) by inserting after subsection (b) the fol-
6 lowing new subsection:

7 “(c) ELECTRONIC POLL BOOK DEFINED.—In this
8 Act, the term ‘electronic poll book’ means the total com-
9 bination of mechanical, electromechanical, or electronic
10 equipment (including the software, firmware, and docu-
11 mentation required to program, control, and support the
12 equipment) that is used—

13 “(1) to retain the list of registered voters at a
14 polling location, or vote center, or other location at
15 which voters cast votes in an election for Federal of-
16 fice; and

17 “(2) to identify registered voters who are eligi-
18 ble to vote in an election.”.

19 (c) EFFECTIVE DATE.—Section 301(e) of such Act
20 (52 U.S.C. 21081(e)), as redesignated by subsection (b),
21 is amended by striking the period at the end and inserting
22 the following: “, or, with respect to any requirements re-
23 lating to electronic poll books, on and after January 1,
24 2020.”.

1 **SEC. 4. SECURITY CLEARANCE ASSISTANCE FOR ELECTION**
2 **OFFICIALS.**

3 (a) STATE OFFICIALS.—In order to promote the
4 timely sharing of information on threats to election infra-
5 structure, the Secretary of Homeland Security may—

6 (1) help expedite a security clearance at the top
7 secret level for the chief State election official and
8 other appropriate State personnel involved in the ad-
9 ministration of elections, as designated by the chief
10 State election official;

11 (2) sponsor a security clearance at the top se-
12 cret level for the chief State election official and
13 other appropriate State personnel involved in the ad-
14 ministration of elections, as designated by the chief
15 State election official; and

16 (3) facilitate the issuance of a temporary clear-
17 ance at the top secret level to the chief State election
18 official and other appropriate State personnel in-
19 volved in the administration of elections, as des-
20 ignated by the chief State election official, if the
21 Secretary determines classified information to be
22 timely and relevant to the election infrastructure of
23 the State at issue.

24 (b) ELECTION ASSISTANCE COMMISSION.—The Sec-
25 retary shall expeditiously issue a security clearance at the
26 top secret level to the following officials:

1 (1) Each member of the Election Assistance
2 Commission appointed pursuant to section 203(a) of
3 the Help America Vote Act of 2002 (52 U.S.C.
4 20923(a)).

5 (2) The Executive Director of the Election As-
6 sistance Commission appointed pursuant to section
7 204(a)(1) of such Act (52 U.S.C. 20924(a)(1)).

8 (3) The General Counsel of the Election Assist-
9 ance Commission appointed pursuant to section
10 204(a)(4) of such Act (52 U.S.C. 20924(a)(4)).

11 (c) DEFINITIONS.—In this section—

12 (1) the term “chief State election official”
13 means, with respect to a State, the individual des-
14 ignated by the State under section 10 of the Na-
15 tional Voter Registration Act of 1993 (52 U.S.C.
16 20509) to be responsible for coordination of the
17 State’s responsibilities under such Act;

18 (2) the term “election infrastructure” means
19 storage facilities, polling places, and centralized vote
20 tabulation locations used to support the administra-
21 tion of elections for public office, as well as related
22 information and communications technology, includ-
23 ing voter registration databases, voting machines,
24 electronic mail and other communications systems
25 (including electronic mail and other systems of elec-

1 tion service providers who have entered into con-
2 tracts with election agencies to support the adminis-
3 tration of elections, manage the election process, and
4 report and display election results), and other sys-
5 tems used to manage the election process and to re-
6 port and display election results on behalf of an elec-
7 tion agency;

8 (3) the term “Secretary” means the Secretary
9 of Homeland Security; and

10 (4) the term “State” has the meaning given
11 such term in section 901 of the Help America Vote
12 Act of 2002 (52 U.S.C. 21141).

13 **SEC. 5. DUTY OF SECRETARY OF HOMELAND SECURITY TO**
14 **NOTIFY STATE AND LOCAL OFFICIALS OF**
15 **ELECTION CYBERSECURITY INCIDENTS.**

16 (a) DUTY TO SHARE INFORMATION WITH DEPART-
17 MENT OF HOMELAND SECURITY.—If a Federal entity re-
18 ceives information about an election cybersecurity inci-
19 dent, the Federal entity shall promptly share that infor-
20 mation with the Department of Homeland Security, unless
21 the head of the entity (or a Senate-confirmed official des-
22 ignated by the head) makes a specific determination in
23 writing that there is good cause to withhold the particular
24 information.

1 (b) RESPONSE TO RECEIPT OF INFORMATION BY
2 SECRETARY OF HOMELAND SECURITY.—

3 (1) IN GENERAL.—Upon receiving information
4 about an election cybersecurity incident under sub-
5 section (a), the Secretary of Homeland Security, in
6 consultation with the Attorney General, the Director
7 of the Federal Bureau of Investigation, and the Di-
8 rector of National Intelligence, shall promptly (but
9 in no case later than 96 hours after receiving the in-
10 formation) review the information and make a deter-
11 mination whether each of the following apply:

12 (A) There is credible evidence that the in-
13 cident occurred.

14 (B) There is a basis to believe that the in-
15 cident resulted, could have resulted, or could re-
16 sult in voter information systems or voter tab-
17 ulation systems being altered or otherwise af-
18 fected.

19 (2) DUTY TO NOTIFY STATE AND LOCAL OFFI-
20 CIALS.—

21 (A) DUTY DESCRIBED.—If the Secretary
22 makes a determination under paragraph (1)
23 that subparagraphs (A) and (B) of such para-
24 graph apply with respect to an election cyberse-
25 curity incident, not later than 96 hours after

1 making the determination, the Secretary shall
2 provide a notification of the incident to each of
3 the following:

4 (i) The chief executive of the State in-
5 volved.

6 (ii) The State election official of the
7 State involved.

8 (iii) The local election official of the
9 election agency involved.

10 (B) TREATMENT OF CLASSIFIED INFORMA-
11 TION.—

12 (i) EFFORTS TO AVOID INCLUSION OF
13 CLASSIFIED INFORMATION.—In preparing
14 a notification provided under this para-
15 graph to an individual described in clause
16 (i), (ii), or (iii) of subparagraph (A), the
17 Secretary shall attempt to avoid the inclu-
18 sion of classified information.

19 (ii) PROVIDING GUIDANCE TO STATE
20 AND LOCAL OFFICIALS.—To the extent
21 that a notification provided under this
22 paragraph to an individual described in
23 clause (i), (ii), or (iii) of subparagraph (A)
24 includes classified information, the Sec-
25 retary (in consultation with the Attorney

1 General and the Director of National Intel-
2 ligence) shall indicate in the notification
3 which information is classified.

4 (3) EXCEPTION.—

5 (A) IN GENERAL.—If the Secretary, in
6 consultation with the Attorney General and the
7 Director of National Intelligence, makes a de-
8 termination that it is not possible to provide a
9 notification under paragraph (1) with respect to
10 an election cybersecurity incident without com-
11 promising intelligence methods or sources or
12 interfering with an ongoing investigation, the
13 Secretary shall not provide the notification
14 under such paragraph.

15 (B) ONGOING REVIEW.—Not later than 30
16 days after making a determination under sub-
17 paragraph (A) and every 30 days thereafter,
18 the Secretary shall review the determination. If,
19 after reviewing the determination, the Secretary
20 makes a revised determination that it is pos-
21 sible to provide a notification under paragraph
22 (2) without compromising intelligence methods
23 or sources or interfering with an ongoing inves-
24 tigation, the Secretary shall provide the notifi-

1 cation under paragraph (2) not later than 96
2 hours after making such revised determination.

3 (c) DEFINITIONS.—In this section, the following defi-
4 nitions apply:

5 (1) ELECTION AGENCY.—The term “election
6 agency” means any component of a State, or any
7 component of a unit of local government in a State,
8 which is responsible for the administration of elec-
9 tions for Federal office in the State.

10 (2) ELECTION CYBERSECURITY INCIDENT.—
11 The term “election cybersecurity incident” means an
12 occurrence that actually or imminently jeopardizes,
13 without lawful authority, the integrity, confiden-
14 tiality, or availability of information on an informa-
15 tion system of election infrastructure, or actually or
16 imminently jeopardizes, without lawful authority, an
17 information system of election infrastructure.

18 (3) FEDERAL ELECTION.—The term “Federal
19 election” means any election (as defined in section
20 301(1) of the Federal Election Campaign Act of
21 1971 (52 U.S.C. 30101(1))) for Federal office (as
22 defined in section 301(3) of the Federal Election
23 Campaign Act of 1971 (52 U.S.C. 30101(3))).

1 (4) FEDERAL ENTITY.—The term “Federal en-
2 tity” means any agency (as defined in section 551
3 of title 5, United States Code).

4 (5) LOCAL ELECTION OFFICIAL.—The term
5 “local election official” means the chief election offi-
6 cial of a component of a unit of local government of
7 a State that is responsible for administering Federal
8 elections.

9 (6) SECRETARY.—The term “Secretary” means
10 the Secretary of Homeland Security.

11 (7) STATE.—The term “State” means each of
12 the several States, the District of Columbia, the
13 Commonwealth of Puerto Rico, Guam, American
14 Samoa, the Commonwealth of Northern Mariana Is-
15 lands, and the United States Virgin Islands.

16 (8) STATE ELECTION OFFICIAL.—The term
17 “State election official” means—

18 (A) the chief State election official of a
19 State designated under section 10 of the Na-
20 tional Voter Registration Act of 1993 (52
21 U.S.C. 20509); or

22 (B) in the case of Puerto Rico, Guam,
23 American Samoa, the Northern Mariana Is-
24 lands, and the United States Virgin Islands, a

1 chief State election official designated by the
2 State for purposes of this Act.

3 (d) EFFECTIVE DATE.—This section shall apply with
4 respect to information about an election cybersecurity inci-
5 dent which is received on or after the date of the enact-
6 ment of this Act.

7 **SEC. 6. ESTABLISHMENT OF ELECTION CYBER ASSISTANCE**
8 **UNIT IN ELECTION ASSISTANCE COMMIS-**
9 **SION.**

10 (a) IN GENERAL.—Subtitle A of title II of the Help
11 America Vote Act of 2002 (52 U.S.C. 20921 et seq.) is
12 amended by adding at the end the following new part:

13 **“PART 4—ELECTION CYBER ASSISTANCE UNIT**
14 **“SEC. 225. ELECTION CYBER ASSISTANCE UNIT.**

15 “(a) ESTABLISHMENT.—There is established in the
16 Commission the Election Cyber Assistance Unit (hereafter
17 in this part referred to as the ‘Unit’).

18 “(b) DUTIES.—The Unit will provide State and local
19 election officials in various geographic regions of the
20 United States with access to risk-management, resiliency,
21 and technical support services provided by election admin-
22 istration and cybersecurity experts who will be based in
23 such regions and who may provide such services in person,
24 by telephone, or online.”.

1 (b) CLERICAL AMENDMENT.—The table of contents
2 of such Act is amended by adding at the end of the items
3 relating to subtitle A of title II the following:

“PART 4—ELECTION CYBER ASSISTANCE UNIT

“Sec. 225. Election Cyber Assistance Unit.”.

4 **SEC. 7. REPRESENTATIVE OF DEPARTMENT OF HOMELAND**
5 **SECURITY ON TECHNICAL GUIDELINES DE-**
6 **VELOPMENT COMMITTEE.**

7 Section 221(c)(1) of the Help America Vote Act of
8 2002 (52 U.S.C. 20961(c)(1)) is amended—

9 (1) by redesignating subparagraph (E) as sub-
10 paragraph (F); and

11 (2) by inserting after subparagraph (D) the fol-
12 lowing new subparagraph:

13 “(E) A representative of the Department
14 of Homeland Security.”.

15 **SEC. 8. REPORTS TO CONGRESS ON FOREIGN THREATS TO**
16 **ELECTIONS.**

17 (a) IN GENERAL.—Not later than 30 days after the
18 date of enactment of this Act, and 30 days after the end
19 of each fiscal year thereafter, the Secretary of Homeland
20 Security and the Director of National Intelligence, in co-
21 ordination with the heads of the appropriate Federal enti-
22 ties, shall submit a joint report to the appropriate congres-
23 sional committees and the chief State election official of

1 each State on foreign threats to elections in the United
2 States, including physical and cybersecurity threats.

3 (b) VOLUNTARY PARTICIPATION BY STATES.—The
4 Secretary shall solicit and consider comments from all
5 State election agencies. Participation by an election agen-
6 cy in the report under this section shall be voluntary and
7 at the discretion of the State.

8 (c) APPROPRIATE FEDERAL ENTITIES.—In this sec-
9 tion, the term “appropriate Federal entities” means—

10 (1) the Department of Commerce, including the
11 National Institute of Standards and Technology;

12 (2) the Department of Defense;

13 (3) the Department of Homeland Security, in-
14 cluding the component of the Department that re-
15 ports to the Under Secretary responsible for over-
16 seeing critical infrastructure protection, cybersecu-
17 rity, and other related programs of the Department;

18 (4) the Department of Justice, including the
19 Federal Bureau of Investigation;

20 (5) the Election Assistance Commission; and

21 (6) the Office of the Director of National Intel-
22 ligence, the National Security Agency, and such
23 other elements of the intelligence community (as de-
24 fined in section 3 of the National Security Act of

1 1947 (50 U.S.C. 3003)) as the Director of National
2 Intelligence determines are appropriate.

3 (d) OTHER DEFINITIONS.—In this section—

4 (1) the term “appropriate congressional com-
5 mittees” means—

6 (A) the Committee on Rules and Adminis-
7 tration, the Committee on Homeland Security
8 and Governmental Affairs, the Select Com-
9 mittee on Intelligence, and the Committee on
10 Foreign Relations of the Senate; and

11 (B) the Committee on House Administra-
12 tion, the Committee on Homeland Security, the
13 Permanent Select Committee on Intelligence,
14 and the Committee on Foreign Affairs of the
15 House of Representatives;

16 (2) the term “chief State election official”
17 means, with respect to a State, the individual des-
18 ignated by the State under section 10 of the Na-
19 tional Voter Registration Act of 1993 (52 U.S.C.
20 20509) to be responsible for coordination of the
21 State’s responsibilities under such Act;

22 (3) the term “election agency” means any com-
23 ponent of a State or any component of a unit of
24 local government of a State that is responsible for
25 administering Federal elections;

1 (4) the term “Secretary” means the Secretary
2 of Homeland Security; and

3 (5) the term “State” has the meaning given
4 such term in section 901 of the Help America Vote
5 Act of 2002 (52 U.S.C. 21141).

6 **SEC. 9. GAO ANALYSIS OF FEASIBILITY OF CONDUCTING**
7 **RISK-LIMITING AUDITS.**

8 (a) ANALYSIS.—The Comptroller General of the
9 United States shall conduct an analysis of the following:

10 (1) The feasibility for States to conduct risk-
11 limiting audits of elections for Federal office.

12 (2) The types of risk-limiting audits performed
13 by States.

14 (3) The extent to which risk-limiting audits per-
15 formed by States have improved the administration
16 of elections in such States.

17 (b) REPORT.—Not later than 1 year after the date
18 of enactment of this Act, the Comptroller General of the
19 United States shall submit to Congress a report on the
20 analysis conducted under subsection (a).

21 **SEC. 10. GAO ANALYSIS OF FEASIBILITY OF REQUIRING**
22 **USE OF PAPER BALLOTS.**

23 (a) ANALYSIS.—The Comptroller General of the
24 United States shall conduct an analysis of the following:

1 (1) The feasibility of requiring the use of paper
2 ballots in elections for Federal office on a nationwide
3 basis.

4 (2) The impacts with respect to accessibility for
5 individuals with disabilities of requiring the use of
6 paper ballots in elections for Federal office.

7 (b) REPORT.—Not later than 180 days after the date
8 of the enactment of this Act, the Comptroller General shall
9 submit to Congress a report on the analysis conducted
10 under subsection (a).

11 **SEC. 11. STUDY AND REPORT ON OPTIMAL BALLOT DESIGN.**

12 (a) STUDY.—The Election Assistance Commission
13 shall conduct a study of the best ways to design ballots
14 used in elections for public office, including paper ballots
15 and electronic or digital ballots, to minimize confusion and
16 user errors.

17 (b) REPORT.—Not later than January 1, 2020, the
18 Election Assistance Commission shall submit to Congress
19 a report on the study conducted under subsection (a).

○